

NOTES ON THE STYLE OF THE LAW

Treason by any other name

by

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≈ nomenclature ≈ treason ≈ statutes ≈ criminal law
≈ offences ≈ classifications ≈



WHAT makes treason here? So the Bard had King Ferdinand ask in *Love's Labour's Lost*,¹ a play which, rather appropriately, premiered at the Inns of Court. The question takes on a less comical light with the recent guilty plea by Jaswant Chail, aged 21, to an offence under the Treason Act 1842,² s 2, after Chail was detained at Windsor Castle in possession of a loaded crossbow and with the declared intention of killing Her late Majesty the Queen. Chail additionally pleaded guilty to making a threat to kill and possession of an offensive weapon.³ A good-spirited online debate ensued as to how precisely to name the particular wickedness which Chail has admitted: is violating the Treason Act 1842 a species of 'treason' or merely 'an offence under the Treason Act 1842'?

The Crown Prosecution Service press release is non-committal, referring first to an offence under the Treason Act 1842, but then grouping these under a heading in the press release marked 'Treason'.⁴ If we look to the traditional tripartite division of offences into treasons, felonies, and misdemeanours, the 1842 Act explicitly creates a (high) misdemeanour. Given the legislative purpose behind the 1842 Act was to specifically create an offence for attacks on the monarch's which did not attract the death penalty or other consequences of (high) treason, it had to create an offence which was not 'treason' in the tripartite classification. This, however, does not end the enquiry, because words can have multiple meanings in law. Blackstone makes clear that treason is a crime as well as a category of crime,⁵ Therefore, when Blackstone says that all treasons are felonies (but not all felonies are treasons),⁶ that is, it is submitted, merely a descriptive point that all

¹ Act IV, Scene III

² 5 & 6 Vic c 51

³ Contrary to Offences Against the Person Act 1861, s 16 and the Prevention of Crime Act 1953, s 1, respectively.

⁴ Press Release of 3 February 2023.

⁵ See, *eg*, 4 Bl Comm 5: 'treason, murder, and robbery are properly ranked among crimes'

⁶ 4 Bl Comm 95

treason offences were, at the time of the writing of the Commentaries, categorised as felony. Indeed, Blackstone gives one alternate definition of treason which seems to fit quite well the 1842 Act's offence (emphasis added):

All offences are either against the king's peace, or his crown and dignity; and are so laid in every indictment. For though in their consequences they generally seem (*except in the case of treason, and a very few others*) to be rather offences against the kingdom than the king[...]⁷

By this definition, treason is an offence against the Sovereign personally, an offence which is not in the nature of a public wrong except in that a harm to the king's person would in turn harm the entire polity.

On the other hand, when we take a look to *Hansard* to find out what Parliament viewed the 1842 Act as created, we find an opposing definition. In introducing the Act,⁸ Sir Robert Peel MP said in part:

The bill which I now propose will also provide for other offences beyond those which bear the name of treason. The bill will subject to severer punishment, than can be applied under the law as it at present exists, all those offences which are connected with the discharge of fire-arms at, or attempts to alarm the Sovereign, even where the charge does not amount to high treason. [...] Let us look at the nature of this crime. It is not a traitorous offence against her Majesty, a contrivance laid by persons possessed of great power against the peace of the realm — the miscreants who have lately offended in this way have been actuated by scarcely any assignable motive whatever. The law, in charity to human nature, has never contemplated the possibility of any human being in the form of man finding any satisfaction in presenting a pistol at a young lady, that lady a mother, that lady the Queen of these Rrealms (*cheers*), and it is monstrous to think that she shall be subject to injury from an offence from which the meanest of her subjects are protected.

The phrase '[i]t is not a traitorous offence against Her Majesty' does seem to indicate the 1842 Act doesn't create an offence of treason. However, the context here is that Sir Robert is distinguishing the acts of lunatics seeking to scare or harm the Sovereign solely for the thrill of the crime, rather than any political approach. Thus, Sir Robert is saying that the intent is not to replace the Queen with an alternate government, as in 'traditional' high treason, but rather simply a debased act of hatred. It would be absurd to suggest that Sir Robert was indicating there was a lack of malice or disloyalty in trying to kill Her Majesty! This is bolstered by the response given by Lord John Russell MP,⁹ who noted regarding the the spate of attacks disturbing the life of Queen Victoria:

It does not spring from any political passion spread through any portion of the people. It has its origin, as the right hon. Gentleman has said, in some base and malicious passion to injure the person of the Sovereign.

7 1 Bl Comm 268

8 HC Deb, 12 July 1842, vol 65, col 20 *et seq*

9 *ibid*, col 26

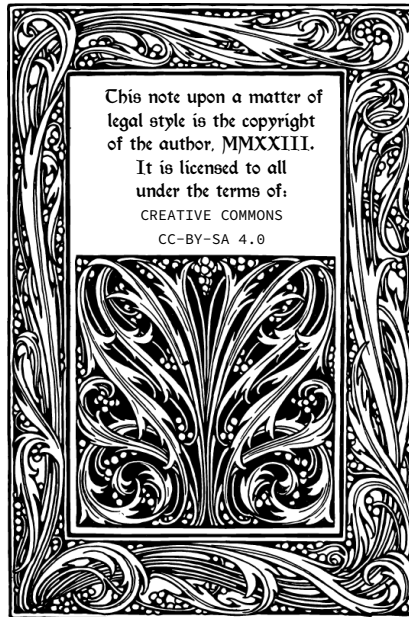
A base and malicious passion does sound treasonous, given a servant killing a master was a minor treason, and presumably a base and malicious passion motivated most such events. Indeed, the Act clearly is designed to protect the Person of the Sovereign, and thus if we return to Blackstone's point that treason offences are against the King personally, rather than the dignity of the Crown, we see why this offence might be treason. On the other hand, looking at the early case law, *R v Hamilton*,¹⁰ where the defendant discharged a pistol loaded with gunpowder only at Queen Victoria, does not use the word 'treason'.

In the end, the definitive answer comes from the Home Office, who conveniently have an authoritative categorisation system for discussing crimes: the *Counting rules for recorded crime*.¹¹ This handy system officially defines the 1842 Act as a form of treason, which means that the Home Office will formally record this conviction as an instance of treason in its annual statistics. While this doesn't resolve the larger theoretical debates, this publication will follow the lead of HM Government and accept that the 1842 Act counts as treason. Therefore, the answer to the question posed at the start of this Note is: '*inter alia*, the Treason Act 1842, s 2'!

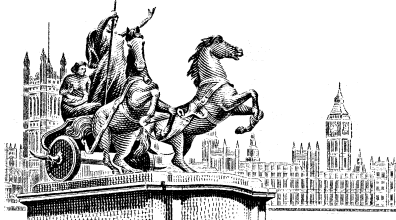


¹⁰ (1849) 7 St Tr NS 1130

¹¹ Available at this link.



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